UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

RONALD MELTON, et al., :
Plaintiffs, : Case No. C-1-01-528
vs :
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al., :
Defendants. :

Deposition of JONATHAN TOBIAS, M.D., a defendant herein, taken by the plaintiffs as upon cross-examination, pursuant to the Federal Rules of Civil Procedure and pursuant to Notice of Deposition and agreement by counsel as to the time and place and stipulations hereinafter set forth, at the offices of Glenn Whitaker, Esq., Vorys, Sater, Seymour and Pease, LLP, Suite 2000, Atrium Two, 221 East Fourth Street, Cincinnati, Ohio, at 9:00 a.m. on Friday, the 16th day of January 2004, before Valerie Jones Conn, a Registered Professional Reporter and Notary Public within and for the State of Ohio.

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S T I P U L A T I O N S

It is stipulated by counsel for the respective parties that the deposition of JONATHAN TOBIAS, M.D., a defendant herein, may be taken at this time by the defendant as upon cross-examination and pursuant to the Federal Rules of Civil Procedure and notice to take deposition, all other legal formalities being waived by agreement; that the deposition may be taken in stenotype by the Notary Public Reporter and transcribed by her out of the presence of the witness; that the transcribed deposition was submitted to the witness for examination and signature and that signature may be affixed out of the presence of the Notary Public-Court Reporter.

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(EXHIBITS RETAINED BY MR. GANSON)

MR. GILLIGAN: We had talked before about stipulating in this case, if we all could since counsel is all here, that the depositions we've taken in the other action, the Chesher case, would be applicable to this case so that we wouldn't have to repeat all of the testimony, and I'm certainly willing to stipulate and, Mike, I'll turn it over to you.

MR. GANSON: That's an agreement that was reached, that all depositions taken in the other cases can be filed and used in this case with respect to all purposes so that we don't have to be repetitive to what's already gone forth and take hours and hours and repeating the same darn thing that was already questioned. However, I would reserve the right, of course, to inquire as to areas that may have been covered but I need a little eludication on it.

MR. WHITAKER: Okay. I agree.

MR. GILLIGAN: I'm agreeable to that.

MR. BARBIERE: I agree.

MR. PATSFALL: For Tom Condon,

Steve Patsfall. I'm agreeable with that.

MR. GILLIGAN: Okay.

JONATHAN TOBIAS, M.D.,

a witness herein, of lawful age, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. GILLIGAN:

Q. Dr. Tobias, as you know, my name is Lou Gilligan and I represent the Hamilton County defendants in this litigation as well as in the companion case, the Chesher litigation.

Let me, first of all, ask you whether you've, at some time or another, had the opportunity to read the deposition which you gave in the case of Jacqueline Chesher versus Tom Neyer, Jr., case number C-1-01-771?

A. Yes.

Q. Okay. And you heard, you were sitting here when we just put on the stipulation that with all of the discovery depositions including yours that came from the Chesher case we were going to make applicable to this case. You heard that, Doctor?

A. Yes.
Q. My only question to you about the deposition then, is there anything in that deposition that you recall reading that you believe is inaccurate?
A. No.
Q. Okay. All right. So you can reaffirm that the testimony you gave there under oath is the same testimony you would give here?
A. Yes.
Q. All right. Now maybe you could just tell me since you gave your deposition -- I might, just for the record, give the date --
MR. GANSON: There's two days. Volume 1 was taken on May the 29th, 2003 and Volume 2 was taken on June the 25th of 2003. I'm aware of a third deposition but I believe at that point in time it was pre-resolution of the Court of Appeals decision. Therefore, most of that would be not substantive in any way.
Q. I agree with that and that was -- basically you took the Fifth Amendment the first time around?
A. Correct.

Q. Since that time what have you been doing, just to kind of bring us up to speed on your own personal life?

A. Well, in August I started back up my residency and so I'm now a pathology resident at University Hospital.

Q. Okay. And you're doing that full time, I presume?

A. Yes.

Q. You're not working in any capacity for the Hamilton County Coroner?

A. No.

Q. Are you still intending to follow the path of that of a pathologist?

A. As a pathologist, yes. Not as a forensic pathologist.

Q. Okay. I want to talk, first of all, about the photo that you took of Mr. Melton. Okay? And if I could just do a general lead-in and you correct me if I misstate. I'm not trying to -- I'm just trying to save a lot of extra questioning.

As I recall when we took your deposition that you testified that you,

yourself, took one photo. Correct?
A. Correct.
Q. All right. And, well, let me just ask a couple direct questions. Do you remember the time of day that you took the photo?
A. It was on my way home, so it was in the evening.
Q. Okay. And could you give me your best estimate of what time that would have been?
A. I don't remember the exact time.
Q. Okay. Like after 6:00 p.m.?
A. I think I testified to it in a deposition previously. I just don't recall the exact time. But somewhere -- I usually went home around six or seven.
Q. All right. And the day that you photoed Mr. -- took a photo of Mr. Melton that was the same day he was killed in the industrial accident, correct, sir?
A. Yeah.
Q. All right. And would you state again for the record, first of all, where was the photo taken?
A. It was taken in the cooler, I

believe.
Q. At the Hamilton County Morgue?
A. Yes.
Q. And as I understand it the body was brought there from the accident scene?
A. Correct.
Q. Okay. And you had learned that a person, turned out to be Mr. Melton, had been killed in an industrial accident some hours before you took the photo?
A. Yes.
Q. And how did you learn about that?
A. I was on the second floor of the Coroner's Office, I was either in my office or out in the common area, and the investigator said -- or whoever was manning the phones got a call that someone had been killed and it was reported to the pathologist who was working -- I think that was Pfalzgraf -- and they asked if I wanted to go to the scene so that's how I knew.
Q. When you say they asked if I wanted to go to the scene, who is "they"?
A. Well, I think Nancy was the investigator and she -- I believe either she or

Dr. Pfalzgraf, one of them, asked if I wanted to go.

Q. All right. And you declined?

A. Yeah. Normally the practice was during the daytime if there was a scene that I would be told about it and if there was nothing going on I would go to the scene. But on this day I was, if I remember correctly, I was just kind of overwhelmed with work and needed to catch up and I remember a storm coming and I was thinking traffic would be bad and I just decided not to go.

Q. Did an investigator from the Hamilton County Coroner's Office go to the scene?

A. I believe Nancy went to the scene.

Q. And Nancy's last name?

A. Woolum.

Q. Okay. And then is it your understanding that Nancy took photos at the accident scene?

A. I've seen photos from the scene and they were in the file, the coroner's file, and I assume those were Nancy's photos.

Q. Did you see photos taken of the body of Mr. Melton during autopsy?
A. I don't recall if I saw those or not.
Q. Okay. Do you know, from being involved in this case, whether or not there were autopsy photos taken of Mr. Melton?
A. Again, I would assume there were because it was a traumatic case and there were injuries to document. But I don't remember seeing any at the moment.
Q. And the photos that were taken at the accident site would have been photos taken in the regular course of business of the Hamilton County Coroner's Office?
A. Yes.
Q. Is there anything that you're aware of that's out of the ordinary with reference to taking those photos at the accident site?
A. No.
Q. If there were photos that were taken during autopsy would they be photos that were taken in the regular course of business of the Coroner's Office?

A. Yes.
Q. And did you take any of those photos either at the accident scene or during autopsy?
A. I didn't take the photos during autopsy or at the accident scene, no.
Q. Okay. Now the body arrived at the Hamilton County Morgue some time prior to your taking the photo which we estimate would be somewhere around six p.m., correct?
A. Correct.
Q. Do you know how long before the body -- strike that.
Do you know how long the body was at the morgue before you took the photo?
A. I don't think very long.
Q. Your best estimate would be how long, Doctor?
A. Maybe an hour.
Q. All right. And I would like you -- I know this is a little repetitious but that's what we're going to focus on. Would you take me in as much detail as you possibly can, I really mean specific detail, of exactly what you did in

respect to taking the photo leading up to it? So take me from the time you first got into the cooler and tell me exactly what you did. Okay?

A. Okay. Well, again, this was three years ago so -- but from my recollection on my way out of the building I, because the case was a trauma case and normally I did the autopsies on kind of the, quote, interesting cases and because forensic pathology, a big part of it is trauma and so I thought I would be doing this autopsy the next day, and so I wanted, because I didn't go to the scene, I just wanted to see what the body looked like before I went home.

And I had my camera with me and I -- so on the way out I went into the cooler, I remember one of the morgue attendants was there and I asked him is the body here yet and he said, yeah, it's in the cooler. And I went in the cooler.

Q. Do you remember which attendant you asked?

A. No.

Q. All right. Go ahead.

A. And I went into the cooler and I --

he said it was -- whoever the attendant was said, the body is just inside the door there. And I don't remember if the bag was zipped or unzipped, but I opened the bag partially to uncover the head and torso and saw, you know, the injuries were tremendous injuries, very severe, and I decided to take a photograph. And I took one photograph and then realized it was the end of my roll of film and -- and also I do remember that I was going to develop the film in the camera that night, at least that's what my plan was to do. And then I zipped the bag up or covered the body back up and went home.

Q. All right. I want to be very detailed in respect to your actions. The body would have been, would you call the apparatus a gurney or whatever that they put the bodies on?

A. Yeah.

Q. A gurney?

A. Yeah.

Q. And the body was already in a body bag?

A. Uh-huh.

Q. And the body was already zipped

up -- I mean, the bag was zipped up?

A. Well, I don't remember if it was zipped up or it was just folded over.

Q. All right. In any event, you couldn't see the body when you first approached it? You couldn't see inside?

A. Right. You couldn't see the face.

Q. All right. So can you tell me, just describe your actions as best you recall as to how you made the body viewable. What exactly did you do?

A. Well, I think I already said either I flipped the bag up or unzipped it and flipped the bag up.

Q. All right. And whichever you did how much of the body was revealed?

A. The head and upper torso, I believe.

Q. Okay. Did you touch the body in any way?

A. No.

Q. Did you ever touch the Melton body at any time in your life?

A. No.

Q. All right. So you simply made that part of the body that you just described visible, you took a camera and you took a photo?
A. Correct.
Q. Did you use any lighting other than the flash that was provided by the camera? I presume it had a flash?
A. I didn't use any other lighting other than --
Q. Did you move the gurney in any way to get under a light or anything?
A. No. No.
Q. Dr. Tobias, was it within the scope of your duties as a fellow with the Hamilton County Coroner's Office when you took that photo? Was it within the scope of your duties?
A. Yes.
Q. Why do you say it was within the scope of your duties?
A. Because I -- that was part of my job was to examine the body, take photographs of bodies and to -- actually part of my duties I was told was to develop a photo collection of injuries.

Q. Okay. So then after you took the photo did you then close the bag up in some fashion, body bag?
A. Yeah. Like I said, either I put it back the way it was, however it was.
Q. And you left the gurney in the same position it was originally?
A. Yeah.
Q. Didn't touch that, didn't move that?
A. No.
Q. All right. And then did you, after you left the cooler, did you go home then? Did you go to Mr. Condon's studio? What did you do?
A. As far as I recall I went home.
Q. Okay. Can you tell me now the circumstances -- I know you said this in your prior deposition -- but the circumstances of surrounding what you did with the film that you now had taken one picture of the Melton body?
A. Well, I developed the film myself.
Q. Where did you do that?
A. At my home.
Q. When did you do that?

A. It was either that evening, like I planned, or later on. I don't recall.
Q. If you say if it was later on how much later on? We talking days, weeks, months?
A. I don't know. I mean, it couldn't have been that long.
Q. Right. Okay. But you don't know exactly how long?
A. No.
Q. All right. So tell me, then, how -- strike that. You developed the film --
A. Yes.
Q. -- yourself?
A. Yes.
Q. And you did that at your home?
A. Yes.
Q. Okay. And what equipment did you use to do that?
A. Just a little plastic canister that is light proof and that you can pour chemicals in and out of without, like, leaking in.
Q. Was there a whole roll of film that you were processing at the same time or just this one?

A. Well, yeah. Well, it was all one roll of film. I mean, I could only do one at a time.

Q. Okay. Did you do other photos at the same time you did the Melton photo?

A. Well, like I said, there was only one photo of Melton on the film. So there were other photos on the film.

Q. I understand that.

A. I don't remember what those photos were of.

Q. Do you remember whether you processed those photos at the same time you did the Melton photo?

A. Well, I think there's a misunderstanding here because when you -- when I'm referring to processing it's just taking, like, that roll of film and camera and developing it into negatives. That's all I'm talking about.

Q. Okay. So what would have been developed into a negative would have been any --

A. All the pictures on that roll of film.

Q. Okay. But you don't recall what the other photos would have been of --
A. I don't remember.
Q. -- whether they were bodies, photos of your children or whatever they might have been?
A. I don't remember.
Q. All right. Then with reference to -- after your processing with reference to the Melton, became the Melton photo it was now in the form of a negative; is that correct?
A. Correct.
Q. So would it be fair for me to describe this as started out as being film, took a photo and you transferred it, if you will, from being film into the creation of a negative?
A. Yeah. The film, all it is is -- or negatives are just developed film so it's the same piece of plastic.
Q. It just takes a different form of the same piece?
A. Yeah, I guess so.
Q. And I may not be, you know, I'm not a film expert but that -- my common parlance of,

you know, we say that if I go out and take a film I put film in the camera then take a photo but I send it to processing I get back photos along with the negatives. But at this point you have a negative but not what we would know as a finished photo, correct?

A. Correct.

Q. All right. So then what did you do with that negative of the Melton body after you processed it into a negative?

A. At some point I took it to Mr. Condon's studio and made prints or a print. I don't remember.

Q. And do you recall the date?

A. No.

Q. Okay. Can you approximate it at all?

A. Not at the moment.

Q. Okay. You're aware that the police, I guess it was the Cincinnati Police, went to Condon's studio at some point, they had a search warrant, I guess, and they went in and they found some of these photos. You know that?

A. Yeah.

Q. Can you estimate how long the photos might have been in Condon's studio before the police did their search and found them?
A. I would only be guessing.
Q. What's your best estimate? It's not critical, I want to get some timeline idea. I mean, would it have been like as a matter of hours or a day or something more than that?
A. More than that. A week or even longer. I just -- I don't remember at all.
Q. All right. So now I want to place you at Condon's. You went to Condon's studio with the negative, correct?
A. (Nodding affirmatively.)
Q. Yes?
A. Yeah.
Q. And you don't remember what day it was?
A. Correct.
Q. Was it in the evening or was it like a weekend, during the day or what?
A. Again, I don't remember. It would either be in the evening or on a weekend.
Q. Okay. Tell me what you did with

reference to the Melton negative at Condon's studio.

A. He had all the equipment to develop the negative into a paper print and so I used his equipment to develop the negative into a print.

Q. Okay. Was Condon present when you did this?

A. He was present in his studio, yes.

Q. Okay. Did Condon play any part whatever in assisting you to make prints, photo prints out of the negative?

A. I think he helped me with the exposure and showing me how to -- I was still learning to use his equipment. He showed me the technical aspects of using his equipment.

Q. That day or had he done that on a prior occasion?

A. You know, I don't know if that was the first time or -- actually, no, I do believe at a prior occasion he had showed me his equipment. But, again, it was kind of complicated and I didn't -- I needed some assistance just to -- how to turn things on.

Q. I would like you to give me your best description you can give me of exactly how you went about making a print or prints of the Melton negative starting with what equipment you used and how you did it, the best of your recollection.

A. Well, there's, you know, there's this thing called an enlarger and you take the negative and put it in a special carrier, I think it's called. That goes into the enlarger and the enlarger shines, projects the image on to a board and paper goes on the board and there's -- wanted to determine the correct exposure for the -- that negative and the paper.

So if I remember correctly what you do is you set the timer for, say, like 60 seconds and then you take a piece of paper and you move it in steps every 10 seconds down the piece of -- like an opaque piece of paper. So you move it in steps every 10 seconds along the photographic piece of paper. And then you develop it in these three sets of chemicals there. You go through the process and then one can look at that print with the strips and see which strip corresponds to the best exposure if it's not too light or too dark. And then you can put a new piece of paper down and just set your timer for that period of time. And after that you develop it again through the chemicals.

Q. And when you develop it again through the chemicals how do you do that?

A. Well, again, there are three chemicals. I think it was a developer, a stop bath and a fixative.

Q. Do you put these chemicals on the face of the paper that you're going to make the photo?

A. No. They're in trays.

Q. Just like you see on TV, run them through a tray?

A. Yeah.

Q. And in that tray are these chemicals?

A. Yeah.

Q. Okay. Are there three trays of chemicals?

A. Yeah.

Q. Is that what you did here?

A. Yeah.
Q. Okay. And what do you call the finished product then after you go through the three trays? Are you finished with the photo after it goes through the tree trays?
A. Well, then there's this washing process.
Q. Tell me about that. What does that involve?
A. It involves trying to wash out all these chemicals.
Q. From the --
A. From the paper. So you just, I guess -- I don't know the details but been told that the print will degrade if they still have these chemicals in them over time so you wash out the chemicals.
Q. How do you do that? You put it in a tray filled with liquid or hold it under a faucet?
A. Actually he had a water bath, it was actually a continuously running -- it was like basically a tray with continuously circulating water.

Q. Okay.
A. And you wash it in that.
Q. All right. Did you do that?
A. Yes.
Q. Okay. And then what? Do you hang it to dry?
A. Then it has to dry.
Q. Do you do that by hanging it or to dry it where do you put it?
A. I don't remember exactly if we hung it or if it was on -- I think you had these screens, kind of like window screens that -- on frames and pictures were laid on those to dry.
Q. All right. And then what?
A. And then are you talking about --
Q. The Melton photo. Did you make a photo?
A. Yes. I made I don't remember how many photos.
Q. Using the same process?
A. Yeah.
Q. All right. Can you estimate approximately how many photos you made in this manner?

A. It would be on the order of less than five.

Q. All right. And, again, just to make sure we're correct and I'm using the right terminology, the photos that you made, or the copies, if you will, of photographs or the photographs you made were all of the same thing, the same scene? There was only one shot taken originally, correct?

A. Correct. I only --

Q. It's all copies of the same thing but in various states of development, or how would you articulate that?

A. Well, the only difference is with the enlarger and the negatives you can make pictures that look different just because there's different parts of the scene. Like --

Q. More of the upper part as opposed to the lower?

A. Yeah. Like, you know, if you have a photo with, like, you and someone else and there's a big space next to it you can put that negative in an enlarger and develop it yourself so you focus and just print that part of the negative.

Q. Okay. Did you do that in this case?

A. I don't remember.

Q. But as far as the original picture, if you will, there was only one?

A. Correct.

Q. Okay. So did you -- so we're on the same wave length terminology-wise what do we call the finished product? We call them photos or what do you call them at that point after they've gone through the process?

A. I would refer to them as a print.

Q. All right. So we're on the same wave length. Is your estimate that you took more than one but not more than five?

A. Well, I can't even say more than one. I just know -- you know, I can't give an exact number.

Q. Do you think you took more than one print --

A. I very well may have.

Q. -- or made more than one print?

A. I may have.

Q. So as I understand your testimony you don't know whether you did but you may have?
A. Correct.
Q. I take it your best recollection is that you may have done more than one?
A. That's -- yeah, but, again, would have been less than five because I just -- I wouldn't have done that many.
MR. GANSON: I'm sorry. I didn't hear the last part of your answer.
A. I said it would have been less than five because I don't -- I couldn't think of a reason to develop more at the moment.
Q. What did you do then with the developed prints?
A. Well, they needed to dry at his studio and that takes time. So I left them at his studio.
Q. Okay. If I understand it, then, correctly whatever number of prints you made they were left at Condon's studio?
A. Correct.
Q. Probably on the screen setup that you described?

A. Yeah. And they also needed to go through one more process.
Q. Did you ever put them through the one more process?
A. I don't believe so, no.
Q. What's the one more process they had to go through? Is that after drying?
A. Yeah, after drying. It's called a toning process.
Q. Toning?
A. Yeah. And --
Q. Did you ever put those prints through the toning process?
A. I don't remember if I did or didn't. I don't think I did but --
Q. Did you ever make any other prints of this photo at another time?
A. No. Just that one time.
Q. When you left the studio that day, whatever it was, the afternoon or evening, did you take any prints with you?
A. No.
Q. Did you take the negatives with you or the negative of the Melton photo?

A. I don't remember.
Q. Did you ever regain custody, if you will, of the prints of the Melton photo at any time?
A. No. I did get the negative back but I did not get the photos back.
Q. When you say you got the negative back had you left the negative at the studio?
A. Well, again, I don't remember if I took it home right afterwards or if it was left there. I just don't remember.
Q. But you, at the time the police did their search and seizure in this case, had you already regained possession of the negative?
A. Yes.
Q. Had you ever, at the time the search and seizure took place, obtained a copy of the print?
A. No.
Q. Of any of the prints?
A. No.
Q. Okay. Had you ever -- strike that. You've seen the prints of the Melton photo you took, right?

A. You know, from my deposition I remember seeing some prints but I couldn't, you know, I just -- you know, I don't really recall the prints.

Q. Here's my question. At some point in time, and I'm not being exactly time specific as much as you've seen some -- back up. Let me start the question over.

Since you left Condon's studio on the day that you did the processing of the photo and made the prints did you ever see those prints again at any time?

A. You know, I believe so. I mean, I believe they were involved in this case.

Q. Right. And they were also a part of the criminal trial that ensued that you were a part of, correct?

A. Correct.

Q. In conjunction with the criminal trial did you ever see any of the prints of the Melton body?

A. Yeah, I saw prints of the Melton body.

Q. What I want to know, then, when you

saw the prints were those prints such that they -- this final step in the development process, I think you called it the toning, had that been done?

A. You know, I don't remember.

Q. Go ahead. I'm sorry. I don't want to cut you off.

A. The reason I don't remember is I do remember, my previous deposition, seeing some of the prints with the Melton photo that had the brownish discoloration. I wasn't sure if that was -- what that was related to. And so it may have gone through the toning process but if it had, again, that was another thing that, after that, needed the washing and drying and --

Q. After the toning process?

A. Yeah. After that it goes through another whole washing process, another drying process and then another -- it's like this iron, basically, that flattens the print. So --

Q. And you never did that?

A. Never got to that point.

Q. So that if we have now prints that are at a point or a stage, if you will, of development and finalization that includes those final steps somebody else did them, you didn't?

A. Well, I don't believe I ever saw any that were in that final step.

Q. All right. Thank you. That's all I have on that subject matter. Let me move on to another area.

I want to talk about your duties as a pathologist at the Hamilton County Morgue. You were functioning as a fellow in pathology all during the period of time that involves this case, right?

A. Yes.

Q. Say, you know, the August period through January, correct?

A. Yes.

Q. And was it part of your duties to access bodies?

A. Yes.

Q. Was it part of your duties to manipulate bodies?

A. Yes.

Q. I would say it's safe to say there's no way that you can perform your function as a pathologist for the Hamilton County Morgue without accessing and manipulating the bodies, correct?

A. Correct.

Q. During the entire period of time that you functioned as a fellow for the Hamilton County Coroner's Office did you ever improperly manipulate any body at any time?

A. No.

Q. Did anybody ever accuse you of improperly manipulating any body at any time?

A. These guys have.

Q. When you say "these guys" tell me who you're talking about.

A. Mr. Ganson.

Q. Okay. And the lawyers in the Chesher case, as well?

A. And the Hamilton County Prosecutor's Office.

Q. Okay. Did the -- and tell me what that involved.

A. Well, I mean --

Q. Can you identify the body and what it is you allegedly did wrong?

A. Well, I'm not going to go through the whole criminal case and list each count. I mean, you can read the counts and see what they accuse me of, every single body of manipulating and accessing improperly.

Q. Okay. All right. Did you, as part of your duties, take photos?

A. Yes.

Q. And where, as part of your duties as a fellow pathologist for the Hamilton County Coroner's Office, did you take photos during the period of time you worked there?

A. I'm sorry. Could you repeat the question?

Q. Yes. You took photos as part of your duties as a fellow pathologist with the Hamilton County Coroner's Office, correct?

A. Yeah.

Q. When you did that where did you take those photos?

A. They would be at the Coroner's Office or at scene investigations.

Q. Did you ever take any photos at any time that were not within the scope of your duties as a fellow pathologist at the Hamilton County Coroner's Office?

A. I never did.

Q. In this particular -- strike that.

You took photos at crime scenes, correct?

A. Yes.

Q. All right. And you've already testified about that and I don't want to repeat all of that testimony. But my question is did Thomas Condon ever accompany you with respect to any photo you ever took at any time at any crime scene while you were employed by the Hamilton County Coroner's Office?

A. No.

Q. Did Mr. Condon, to your knowledge, ever in any way, shape or form access, view, manipulate, photograph anything with reference to the body of Ronald Melton?

A. No.

Q. Do you know of any physical possible way that Mr. Condon could have done that?

A. No.

Q. Just one other area that I want to talk about or ask you questions about if you'll just bear with me a second. Do you recall off the top of your head, Doctor, when -- what the date was when you met with myself and certain other counsel in this case for purposes of being interviewed on a Sunday?

A. The exact date I do not recall.

MR. GILLIGAN: Off the record.

(Off the record discussion.)

Q. Dr. Tobias, you'll recall that there was an affidavit also that you gave for purposes of the Chesher case?

A. Yes.

Q. And as Mr. Ganson was kind enough to give me the date it was signed on May 21st, 2003, and have you seen that affidavit recently?

A. Yes.

Q. Is there anything in the affidavit that you believe is inaccurate or incorrect or false in any way?

A. No.

Q. Will you reaffirm it --

A. Yes.

Q. -- to be true and accurate?
A. Yes.
Q. Prior to May 21 within a matter of a few days, whatever that Sunday was, let's say I think it probably would have been about the 17th or 18th of May, you had occasion to be interviewed by myself, correct?
A. Correct.
Q. And do you recall whether or not you were present with legal counsel?
A. Yes, I was.
Q. What legal counsel were you present with?
A. I was present with Marc Mezibov, Jack Scott, and I believe Joe Mordino was there, too.
Q. And do you recall that in addition to myself Mr. Barbiere was there?
A. Yes.
Q. And Mr. Hurley was there?
A. Yes.
Q. Jamie Scott from my office was there?
MR. GANSON: Jamie Ramsey.

Q. I mean Jamie Ramsey?
A. Yes.
Q. Anyone else that you recall?
A. I don't remember anyone else.
Q. Okay. And do you recall that the reason why the meeting was held on a Sunday was simply convenience to get the parties together since there was some filing deadlines that were coming up the following week?
A. Well, the reasons -- I mean, when you start asking reasons you're asking me from what I've been told by my attorneys.
Q. Okay. Then I don't want -- then don't answer my question. I don't want you to reveal anything your lawyers told you. Okay. So the reasons for why that particular date was picked, you weren't involved in that, you just agreed to appear at that time?
A. Well, again, I would invoke attorney/client privilege and not give the reasons I was told.
Q. Okay. The arrangements for the meeting were set up by your lawyers?
A. I believe so, yeah.

Q. All right. Now when you appeared to give the affidavit did you do so voluntarily?

A. Yes.

Q. Were you coerced in any way?

A. I was not coerced. I think I need to clarify one thing. At the time I was feeling threatened by the county in the sense that I was under the -- had this dec action going on with the county regarding my defense and the -- I felt some pressure in regards to that dec action that there would be no hope of resolution to the dec action unless I cooperated at that moment, and coming so soon after my appeal I felt rather -- I had a lot of distaste at cooperating at that time.

But in regards to the affidavit everything in it is true. Everything I said was -- came from me. No one told me what to say.

MR. GILLIGAN: All right. That's all the questions I have. Thank you.

MR. GANSON: With permission I'd like to take a real quick break.

MR. WHITAKER: Sure.

CROSS-EXAMINATION

BY MR. GANSON:

Q. Good morning, Dr. Tobias.

A. Good morning.

Q. I'm Michael Ganson as we've introduced each other and I think we even know each other from previous occurrences.

I'm going to ask you a number of questions and I know you've been through a number of depositions so I'm only going to repeat one instruction and that's particular to me. There will be times I may ask a question that is unintelligible to you. And rather than answer that question I would ask that you ask me to rephrase it or restate it so that we can have a clear understanding. There will be times, happens every time I ask questions. So with that in mind do you agree to do that in the event that I ask a question that you just don't understand?

A. Yes.

Q. Okay. As you know I represent a number of Meltons, siblings of Mr. Ron Melton. I would like to break this into certain areas. I have reviewed the depositions. You heard the stipulation. I'm going to try not to get into the same information that was elicited from you in those previous depositions. But there are certain areas that I need clarification.

What I would like to do is break this into different parts, and the first part that I would like to address is your relationship with the Hamilton County Morgue's Office and then we'll flow through pretty much on a chronological basis. Okay?

A. Okay.

Q. Okay. As I understand you were brought on board with the Hamilton County Morgue's office as a fellow, right?

A. Correct. Yes.

Q. You'd already gone through a residency program elsewhere, correct?

A. No, not quite. I started my fellowship in the middle of my residency and I was going to go back and finish my residency afterwards.

Q. And where did you begin your residency?

A. I did my first year of residency at

UCLA and then after moving here continued at the University of Cincinnati.

Q. You didn't continue your residency at the University of Cincinnati immediately upon returning to Cincinnati from UCLA, though; is that correct?

A. It was a four month gap.

Q. Is a fellowship a part of the residency?

A. No.

Q. Is a fellowship an additional training period over and above the residency?

A. Yes.

Q. Okay. And I take it that you chose the Hamilton County Morgue's office, or asked to become a fellow at the Hamilton County Morgue's Office because of your interest in forensic pathology, right?

A. Yes.

Q. Okay. What was difference in the context of what you were doing at UCLA and your first year residency and what you were going to be doing and actually did, in fact, do at the Hamilton County Morgue's Office?

A. Well, it was -- it was completely different aspects of pathology. At UCLA I was learning general pathology and I was just starting out so I didn't know anything at the moment and as a fellow was focused on forensic pathology, and forensic pathology is something that you only briefly touch on during your residency. And in order to practice forensic pathology you need that extra year of training.

Q. So it's sort of like a specialization then?

A. Yes.

Q. Usually when you're a fellow, as I understand, you go on to become board certified in that particular area of specialty. Is that what your intention was at the time?

A. Yes.

Q. Okay. And at the time that you became a fellow at the Hamilton County Morgue's Office you'd already completed the first year of your residency because I saw that you joined the Hamilton County Morgue in July and my understanding is that doctors will go from place to place in that July 1st timeframe. Is that a

fair statement?
A. Yeah. Though I had also completed eight months at University of Cincinnati prior to the fellowship.
Q. So you had a year and eight months?
A. Correct.
Q. Were you taking -- was the plan at the time that you joined the Hamilton County Morgue to do the fellowship to return to finish up your -- is it a two year residency?
A. Actually it's a -- depending on how it goes it's a five year residency normally.
Q. Five year residency for pathologists generally?
A. Yeah, for general pathology.
Q. And how much time for the fellowship, one year?
A. One year.
Q. So basically you were interrupting the residency process for the fellowship year?
A. Correct.
Q. Would that fellowship go toward that five years of residency?
A. It actually is optional. If one

decides to put it towards -- with pathology there's one year that one can do pretty much anything medically related. And if one decides they can put that year of your fellowship towards that fifth year of residency. The only caveat is you can't become board certified in that fellowship specialty.

Q. So actually then your intention was six years?

A. Yes, unless I did not enjoy forensic pathology then I would have just counted it as a year of residency.

Q. And as I understand it during Mr. Gilligan's questioning you've now moved your focus of interest away from forensic pathology to other areas of pathology; is that a fair statement?

A. Yes.

Q. And I take it the reason that you did that was because of what happened to you at the Hamilton County Morgue's Office in the context of the criminal proceedings and the civil proceedings and so on; is that a fair statement?

A. Yes.
Q. Not because of a lack of interest in the particular area, in other words, right?
A. Well, I mean, I think all those things have given me a lack of interest.
Q. But, in other words, that was the impetus for your decision, not because --
A. Yeah.
Q. During that July to the period of time when all of a sudden you're faced with these accusations by the Hamilton County prosecutor and so on, during that period of time prior to that you had an interest in forensic pathology, right?
A. Correct.
Q. Okay. When you joined the Hamilton County Morgue's Office as a fellow were you given any policies, procedures, rules, personnel manuals, anything that showed course of conduct, duties and responsibilities, anything along that line at all?
A. Yeah. I was given their binder, the policy binder and I was given about a two page thing which I think was part of the binder

on what my duties were.

Q. Do you still have that?

A. I think it's part of the -- I think it's been filed as part of the -- this case, or at least part of the Chesley case. I'm not sure if I still have it or if my attorneys have it.

Q. But whatever you had you either turned over to your attorneys for copying purposes and retain a copy -- or the original, I should say, or you turned it over entirely, you no longer have it at all; is that a fair statement?

A. Yeah.

Q. And I take it, when you say your counsel, you're talking about Mr. Scott and Mr. Mordino, right?

A. And Mr. Mezibov, and I understand they've shared some documents with Glenn. But I don't know which documents.

Q. All right. And when you say Glenn, you mean Mr. Whitaker?

A. Yeah.

Q. Okay. In the context of the notice of deposition this has been scheduled a number of different times and obviously for reasons outside of anybody's control didn't happen until today. Did you receive a copy of the request of the items that we asked to be produced in the context of your deposition?

A. I personally didn't receive one but my attorney did.

Q. Okay. And when you say your attorney, are you referring to Mr. Mordino?

A. No. Mr. Whitaker.

Q. Okay. So when the previous deposition scheduled that did not occur when Mr. Mordino was counsel of record along with Mr. Scott you did not see a copy of the list of the items that were requested to be produced?

A. I may have. I just don't recall.

Q. I'm going to hand you a copy of the items that were requested. Would you tell me if you have any of the items listed in the numbered item one?

A. No, I do not have any of them.

Q. Did you at any time have any of those documents or materials?

A. Not that I recall.

Q. And you never, therefore, had an opportunity to turn anything listed in number one to counsel, I take it, right?
A. If I never had it I never could have given it.
Q. Okay. Would you answer the same questions with respect to number two? In the interest of time I'll ask you to go through each one and answer the questions.
A. I don't have any of those documents either.
Q. In number two?
A. In number two.
Q. Never had any of those, right?
A. Not that I recall, no.
Q. How about the next item numbered document?
A. Number three, the only opinion here is the one letter which I don't have but which was -- I think I may have a copy of it but which was produced by someone else --
Q. Okay.
A. -- from the Hamilton County Prosecutor's Office.

Q. Continue on.

A. Again, I don't have any of those documents.

Q. And that's with respect to number four?

A. Number four.

Q. Continue on, sir. And, again, this is a series of questions and in the interest of time I'm not repeating myself. When you say "I don't have any" we're talking about you never had them, right?

A. Correct.

Q. Okay. Go ahead.

A. And number five, any documents I do have fall under attorney/client privilege.

Q. And, therefore, you do have documents that pertain to number five but they have not been produced on the basis of attorney/client privilege, is that a fair statement, with respect to item number five request?

A. Yes.

Q. Okay. How about the next item, sir?

A. I do not have anything relating to number six.
Q. Never have, correct?
A. Never have.
Q. Okay. Continue on, sir.
A. I do not have any documents and never have related to number seven. In regards to number eight any documents that I may have had would have been included in that coroner policy manual which I no longer have.
Q. Turned over to counsel, right?
A. Well, no. I don't believe I ever took it from the building.
Q. Okay. So it would be within the control and custody of the Hamilton County Morgue --
A. Correct.
Q. -- personnel?
A. Well, in number nine I don't have any documents and never have. Number 10 it seems to me refers to any piece of paper, anything relating to this case and, I mean, I have printouts of the various lawsuits and motions but nothing that has not been produced.

Q. Other than that which is attorney/client privileged, right?
A. Correct.
Q. Okay.
A. With regard to number 11 I don't have any documents, never have. In regards to number 12 I don't have my personnel file.
Q. That's within the control and custody of the Hamilton County Morgue's office?
A. Correct.
Q. Okay. Never requested a copy of it yourself?
A. You know, I don't know if my attorneys did or not.
Q. You've never seen one?
A. Personally I never requested it and I don't recall ever seeing one.
Q. Okay.
A. Regarding private photographic collections you're referring to my own photograph collection? I do have pathology photographs but not -- I don't have anything from the Hamilton County Morgue.
Q. Okay. So there are no private

photograph collections of any of the cases on which you worked while you were in your fellowship at the Hamilton County Morgue; is that a fair statement?

A. Yeah. That's a fair statement.

Q. There were photographs, though, at some point in time of cases on which you worked while you were a fellow at the Hamilton County Morgue, correct?

A. No. I mean, I'm referring to photographs from residency of -- you know, often times we'll take photographs of a lung because that has an interesting tumor, or a piece of liver. Those are the kind of photographs I'm referring to.

Q. What about photographs of death scenes and those types of things? Did you keep a private photo collection with that?

A. No. Those would all be related to fellowship program because that's the only times I ever went -- and I have no collection, I have no photographs in my possession that I took at all during that period.

Q. I understand that. But it is a

fact, as I understand the state of the record at this point, that you did take photographs while you were a fellow at the Hamilton County Morgue's Office that you took for what you referred to as teaching purposes?

A. Correct.

Q. For you to hold on to privately, right?

A. Yeah. Though, again, those were photographs taken during -- I mean, there's two groups of photographs. There's the ones that were on the Bronica camera which I think have all been -- we all have seen those, and then there's the photographs taken with the digital cameras which were all on file at the Hamilton County Morgue. And the practice in regards to the digital photos was to save them on disk or on CDs and keep that. But at the point when I left there I never had had that opportunity to do that.

Q. At the point that you left the Hamilton County Morgue's office you had not had an opportunity to do what?

A. To copy those pictures. As, you

know, when I left -- when I started my fellowship the previous fellow who was there from the year before was going through all the photographs of all the cases he had done and was taking Kodachromes, they were on slides, for his own collection. And at the point -- and because the things were now in -- digitized I had the opportunity, or I would have the opportunity to go through and look at the photographs on the computer and copy those on to a CD before I left. And as of January I'd yet to do that.

Q. Okay. So as of January from the period of July of 2000 through January of 2001 when your fellowship abruptly ended at the Hamilton County Morgue's office, at that point in time you had not yet created a private photo collection for teaching purposes, I take it; is that a fair statement?

A. Yeah. Had not physically created one.

Q. Okay. And up until then all the photographs that you had taken other than with the non-digital camera were a part of the Hamilton County Morgue's official files on the various cases that passed through the morgue's offices, right?

MR. WHITAKER: I'm going to object. You excluded the Bronica.

Q. Well, I'll cover the Bronica but I just want to make sure, the Hamilton County Morgue's Office, at the time that you came on board, had converted over to a digital camera system, right?

A. Well, they were in the process. They -- actually when I first started I was still using slide photography for the first month or so.

Q. For July?

A. Yeah.

Q. Okay. When you took -- then let's break it down so I have a good understanding what exactly the situation is. From July 1 until August 1st approximately, that one month period, you did not have a digital camera issued by the Hamilton County Morgue's office; is that a fair statement?

A. Well, I think they used it for the scenes.

Q. Scenes of the incidents?
A. Yeah. But for the autopsy photographs it was still slides.
Q. Okay. And is that on the Bronica camera that -- to which you referred?
A. No. That was some other cameras they had.
Q. And then at some point in time after that first month that you came on board as a fellow they then switched over even for the autopsy photographs to a digital camera, fair?
A. Yes.
Q. Okay. And so at that point in time presumably everybody was using digital cameras, fair statement?
A. Yeah.
Q. Okay. For that one month period, approximately, when you were using non-digital cameras were those photographs that you were taking in the course and scope of your fellowship with the Hamilton County Morgue's Office filed with the Hamilton County Morgue's official files?
A. Yes.

Q. Were copies of those photographs taken by you at any point for personal private collections for teaching purposes or otherwise?
A. No. Those -- if there was something interesting one would take several photographs of it so you could just take a slide out of the file. But I had not taken any slides.
Q. Okay. It was your intention at some point as you came to a close with your fellowship that you were going to develop your teaching, private teaching photo file; is that a fair statement?
A. Yes.
Q. Okay. With respect to the digital, all the digital photos that you took ended up in the official Hamilton County Morgue's files for that particular individual that was being photographed; is that a fair statement?
A. Yes.
Q. Okay. Now with respect to the Bronica, as I understand it the photo that you took of Mr. Melton did not make it into the official Hamilton County Morgue's file on Mr.

Melton; is that a fair statement?
A. Yes.
Q. Now let's back up. I'm sorry I went off this tangent. But back to the manual and such I take it -- first, before I do that, we've covered all items, right?
A. Well, not 13 and 14.
Q. I think we covered 13 but correct me if I'm wrong. You had none, as I understand it?
A. Yeah. I have none.
Q. Okay. And then 14?
A. I don't have that.
Q. You don't have anything on that?
A. No.
Q. Never have?
A. Never.
Q. Okay. Doctor, you were given this manual upon arriving at the Hamilton County Morgue's Office. Did any part of that manual deal with the procedures that you were expected to follow with respect to maintaining photographs of individuals who passed through the morgue, deceased individuals obviously, in

the context of what was to be done with these photographs?

A. No.

Q. Were you ever provided with any written material that documented the policy, procedure and rules that pertained to photographs that were taken in the official course and scope of your practice in the Hamilton County Morgue as a fellow in the context of what to do with those once they were taken?

A. No.

Q. Were you, at any point in time at the time that you came on board as a fellow with the Hamilton County Morgue's Office, given any other direction as to the policies, procedures and rules as to the handling of photographs in the context of cases that passed through the Hamilton County Morgue in which you were involved?

A. No.

Q. Were you ever given oral instructions as to the policies, procedures and rules in the handling of photographs that you took in the context of cases in which you were involved or potentially would be involved that passed through the Hamilton County Morgue's Office?

A. Can you repeat that question?

Q. Surely. I'll tell you, rather than me repeat it why don't I have the court reporter read it?

(Record read by Reporter.)

A. No. I mean, there was no --

Q. Who was your direct supervisor at the Hamilton County Morgue's Office?

A. Well, Dr. Pfalzgraf was the director of the fellowship program.

Q. Did Dr. Pfalzgraf ever instruct you as to what the rules, policies and procedures of the handling of photographs would be that you would be taking during your fellowship with the Hamilton County Morgue's Office in the context of cases that went through the Hamilton County Morgue's Office?

A. No.

Q. Did Dr. Parrott ever inform you as to that aspect as far as photographs? Same

question with respect to Dr. Parrott?
A. No.
Q. Did Dr. Utz?
A. No.
Q. Same question. How about Terry Daly?
A. No.
Q. How did the Hamilton County Morgue's Office communicate to you what the policies, procedures and rules were with respect to the handling of photographs taken by you in the context of your fellowship with the Hamilton County Morgue on cases that passed through the Morgue's Office?
A. I was never, that I recall, given a policy in regards to the photographs.
Q. Were you ever instructed as to the security of these photographs in the context of them being official records and the process by which they could be released into the publics?
A. Yeah. I was told that, actually on a number of occasions, that they're public record and that anyone can come and request them.

Q. Was there ever any indication in writing as to that effect?
A. No, except for that it had occurred in the past.
Q. What had occurred in the past?
A. That I think people had come and requested photographs and they just were given.
Q. The question, though, is was this something in writing that you reviewed and saw that was prepared and provided to you by the Hamilton County Morgue in the context of your fellowship?
A. What was?
Q. The release of photographs into the public stream?
A. No. I think it was just part of the statute, if I remember. There was -- I was told that the statute says that everything the Coroner's Office does is public record.
Q. Who told you that?
A. I was told that by the -- at least I remember Terry Daly mentioning that to me, and I believe Pfalzgraf, and I know Utz did.
Q. Did the three of them tell that to

you at the time that you came on board with the Hamilton County Morgue as a fellow?

A. Well, it wasn't mentioned as like this is the policy you must follow. It was just kind of a general statement when I started that, you know, everything here is public record and that's --

Q. And that was it? Is that a fair statement?

A. Yeah. I mean, that was -- it was also, you know, in regards to things like notes you might take during an autopsy, that those are public record and so just to, you know, be careful, they said, about what you -- especially when it came to, like, criminal cases because you don't want to write something down that's different from what you dictate and whatnot.

Q. Okay. So basically I take it from what you're saying, if I may paraphrase, what I'm understanding you're saying is that they were telling you in the context of your fellowship with the Hamilton County Morgue's Office beware, be advised. Everything that you do is subject to public scrutiny because as a matter of statute anybody in the public can get access to the Hamilton County Morgue's official records. Is that a fair statement?

MR. BARBIERE: Objection.

MR. GILLIGAN: Object to the form of the question.

MR. WHITAKER: Objection.

A. No. It wasn't -- that was never told to me that subject to public scrutiny. It was just stated that this is an open place and it's -- and everything here is public record.

Q. Okay. Did you ever receive instructions as to the process by which a member of the public would be able to access records and photographs contained within the Hamilton County Morgue's official records?

A. No.

Q. Did you understand that there was a process by which members of the public would be able to access the Hamilton County Morgue's official records?

A. I didn't know that there was a process.

Q. Certainly during your tenure as a

fellow for the Hamilton County Morgue's Office you were never in the position to observe a member of the public come in and just rifle through the official records and files of the Hamilton County Morgue's Office, though, correct?

MR. GILLIGAN: Object.

A. I never saw anyone do that.

Q. Okay. Were you aware of, by way of written instructions through this manual or other written direction, as to the procedure that a member of the public would be able to access the Hamilton County Morgue's official records?

A. I don't recall seeing anything like that.

Q. Did you understand that you were to be placing everything that you did into the official records of the Hamilton County Morgue's Office in your context as a fellow at the Hamilton County Morgue?

A. Can you repeat that?

Q. Were you instructed that everything that you do in the context of your fellowship at

the Hamilton County Morgue was to be placed within the official records of the Hamilton County Morgue?
A. No. I was not instructed.
Q. Did you ever receive anything in writing that indicated that everything that you did was to be placed into the Hamilton County Morgue's official records in the context of anything written or any photographs taken?
A. No.
Q. Was it your understanding that if a member of the public came to you and said "I want to see materials concerning Mr. Melton" that you would be able to just turn that file over to him or her?
MR. GILLIGAN: Excuse me. Could you read the last question again?
(Record read by Reporter.)
MR. GILLIGAN: Thank you.
A. I wouldn't have done that but I -- there was no -- you know, I wasn't told what I should do. I would have probably asked someone what I should do.
Q. Who would you have asked?

A. I would have asked one of the doctors.

Q. Dr. Pfalzgraf, Dr. Utz?

A. Dr. Schultz.

Q. Dr. Parrott?

A. Dr. Parrott.

Q. Would you have asked Mr. Daly?

A. I may have, would have asked him or Ronda Gros.

Q. But as far as when you came on board as a fellow you were never given any specific instructions as to how a member of the public would release -- would receive either photographs or official records out of the official file of the Hamilton County Morgue, right?

A. Right.

Q. Okay. With respect to, again, the instructions that you received upon arriving at the Hamilton County Morgue as a fellow did any of that contain any directions as to the policies, procedures and rules in the handling -- in your handling of the official record and file of the Hamilton County Morgue?

A. I'm sorry. Can you repeat the question again?

Q. If you would.

(Record read by Reporter.)

A. Not that I recall.

Q. How did they expect you to understand, if you know, I mean, is this something that -- I'm trying to get an understanding that because you had already gone through residency that you would know, just by virtue of your position and past experience, what the policies and procedures and rules would be.

MR. GILLIGAN: Object to the form of the question. Just one of the many facets of the objection I object to is your reference to "they" because we don't know who "they" is. And your previous questions had a whole lot of people identified.

A. What was explained to me was that there was a difference between where I had just come from where there's -- from the hospital setting to this setting. The hospital setting there's doctor/patient privileges and certain things that go along with that. In regards to this setting they said there is none. It's public. And also in regards to your medical charts when you're writing medical charts you don't write, I mean, you can write stuff that may not, what's the word, necessarily be -- you're writing the stuff to take care of the patient and you're not so worried about how the patient's going to feel about what you're writing. But in regards to the Coroner's Office I was told that, you know, the sheets and descriptions you write of the scenes and whatnot, that the families can get hold of and it's all public and anyone can see it and so to keep that in mind.

Q. Who told you that?

A. I believe that was Dr. Pfalzgraf told me that.

Q. Anybody else?

A. I don't remember.

Q. Did anybody advise you from the Hamilton County Morgue's Office regarding the policies, procedures or rules in the handling of photographs that you took with the non-digital camera for that one month or so in terms of how those were to be developed?

A. No.

Q. Did anybody give that same question with respect to where they were to be developed?

A. No.

Q. Did anybody restrict your places of developing those photographs?

A. No.

Q. Was it your understanding that those photographs were to be developed on site in the darkroom on the second floor of the Hamilton County Morgue facility?

A. No. I didn't even know they had a darkroom and I had actually told them where I was developing the photos.

Q. When you say you told them what did you tell?

A. I had told the doctors, I know Dr. Pfalzgraf and Dr. Utz, and I know I told Terry Daly and I, at some point, told Dr. Parrott.

Q. Now did you tell them that that's where you were developing the non-digital camera photographs that you were taking of your official cases so -- cases that went through the Hamilton County Morgue's Office?

A. Yes.

Q. At what point in time did you tell them that's where you were having these photographs developed?

A. As soon as I got the camera.

Q. Now which camera we talking about, the --

A. The Bronica camera.

Q. I'm talking about before -- the Bronica camera, as I understand it, was not the camera that you were using during the first month that you came on board as a fellow at the Hamilton County Morgue; is that a fair statement?

A. Yes.

Q. I'm talking about that camera. Where did those films that you took photos with, that camera, get developed?

A. I don't know. Terry Daly developed them.

Q. Okay. So basically, as I understand it, then, you would take the photographs with this non-digital camera and then the film from that camera would be given to Mr. Daly to develop the film; is that a fair statement?

A. Yeah.

Q. Did you give him the film or did he come and acquire the film himself from the cameras?

A. I think he just came and acquired it.

Q. Okay. And then something different occurred with respect to the Bronica, is that a fair statement, in terms of how the development occurred of the film that you took of the photographs?

A. Yes.

Q. Okay. And my understanding with respect to that is that you found a Bronica camera at the Hamilton County Morgue's Office that belonged to the Hamilton County Morgue, right?

A. Yes.

Q. And I take it that you found that on the second floor of the Hamilton County

Morgue's premises?
A. Actually it was the third floor in the crime lab.
Q. In the crime lab. Are you familiar now with the fact that there was a darkroom at the Hamilton County Morgue's Office for developing film?
A. Well, I only am familiar because I've heard it testified during depositions.
Q. But you've never seen it?
A. No.
Q. Never accessed it?
A. No.
Q. Never viewed it?
A. No.
Q. Still to this day, firsthand knowledge, not even aware that it existed?
A. Correct.
Q. Never were informed at the time that you came on board as a fellow with the Hamilton County Morgue's Office that it existed?
A. Not that I recall.
Q. Not told from the time that you came on board to the time that you were abruptly

terminating your relationship with the Hamilton County Morgue's Office that this darkroom existed?

A. No.

Q. And I take it that Mr. Daly never informed you where he was developing the film that he was acquiring of the -- from the cameras that were being used before the full conversion to digital cameras took place, right?

A. I don't remember exactly. I seem to recall at some point him saying that there was a machine that he used but my impression was that there was no darkroom. It was just a machine on a table like you see at Wal-Mart and whatever.

Q. Okay. But you never saw that?

A. No.

MR. GILLIGAN: Never saw what?

Q. The machine that we're talking about?

A. No. I never saw it.

MR. GILLIGAN: Not the machine at Wal-Mart, the machine at the morgue?

A. Yeah.

Q. I understood that you meant the machine at the morgue, sir. When you borrowed this Bronica camera from the Hamilton County Morgue's Office were you given any specific instructions as to what photographs you were permitted to take with that camera?

A. No.

Q. Were you ever restricted from taking any photographs in the context of the official cases that went through the morgue by anybody at the morgue?

A. No.

Q. Were you ever instructed that you weren't to use that camera any further, any longer, the Bronica camera any longer, for official cases going through the Hamilton County Morgue?

A. Well, only when they took it from me after -- when they suspended me.

Q. Right. I'm talking about that timeframe between -- I guess in August is when you borrowed the Bronica camera?

A. The exact time I don't -- somewhere August.

Q. August, September 2000. And then they took it from you in January of 2001?

A. Yeah, but during that time no one restricted it.

Q. And they certainly knew that you were using that camera for taking photographs in the context of official cases going through the Hamilton County Morgue's Office?

A. Yes.

Q. Okay. And as I understand Mr. Daly came to you at some point in time during the fall of 2000 to inquire as to when you would no longer need to use or continue to borrow the Bronica camera for your purposes; is that a fair statement?

A. Yes.

Q. Okay. And did you understand at the time that he came to you and asked you about when you would be finished with the use of that Bronica camera that he was under the impression that you were using it for photographs of a personal nature for your children and such?

A. I don't know what -- I don't know if he knew that or not.

Q. Did he ever communicate to you that he understood that you were using that Bronica camera for a personal purpose as opposed to an official purpose?

A. He never indicated to me anything it was for.

Q. What was the context in which you had this conversation with Mr. Daly where the subject of your use of the Bronica camera should come to an end at some point very shortly?

A. Well, he told me that they were looking into getting -- converting it into a digital camera. You could buy a device to attach on to the back to make it digital. And that's the context of what he was talking to me about. He said that they were thinking of taking that camera and converting it to a digital camera.

Q. So the fact of you borrowing that camera for personal purposes to take photographs of your children and so on was never a subject of discussion between you and Mr. Daly?

MR. GILLIGAN: Object to the repetition. You already asked that question a

minute ago.
MR. WHITAKER: Object.
A. Not that I recall.
Q. Doctor, at any point in time during the process as your relationship as a fellow with the Hamilton County Morgue were you ever told by Dr. Pfalzgraf not to use that camera?
A. No.
Q. Did he know that you were using it for official purposes at the Hamilton County Morgue?
A. Yes.
Q. Did anybody instruct you as to how to handle the film of the photographs that you took in the context of the official records of official cases at the Hamilton County Morgue?
A. No.
Q. How about Dr. Utz? Was he aware that you were using it for official purposes as well?
A. Yes.
Q. Was Dr. Schultz aware that you were using it for official purposes as well?
A. I think so, yes.

Q. What about Dr. Parrott? Was he?
A. I told him, yes.
MR. GILLIGAN: I'm sorry?
A. I said I had told him.
MR. GILLIGAN: Had told him?
A. Yeah.
Q. And was this prior to the January 2001 timeframe?
A. Yes.
Q. And at no point did anybody of the doctors, not one of those doctors tell you in the manner in which the film needed to be handled in the context of the official records keeping for the official files of the Hamilton County Morgue?
A. No.
Q. Were you ever given specific permission by the Hamilton County Morgue to develop the film that you took of official cases going through the Hamilton County Morgue with that Bronica camera as to where to develop it?
A. Well, I told them where I was going to develop it and developing it and they said it was okay.

Q. You told them that you were going to develop at Mr. Condon's studio?

MR. GILLIGAN: Excuse me. Can I just ask that we clarify who "they" is because we've now run through five different individuals and is he answering that as collectively Parrott, Pfalzgraf, Utz, Schultz? I don't know if I missed anybody but that's who we identified.

MR. GANSON: And Mr. Daly, as well.

MR. GILLIGAN: And Mr. Daly.

Q. If you would, Doctor, in order to avoid objections on that context can you focus on identifying who the they are when you answer the question, sir?

A. Yes. I'll try.

Q. Okay. Who told you -- who did you advise at the Hamilton County Morgue's Office that you were using Mr. Condon's studio to develop film of photographs that you took in the official course of your duties at the Hamilton County Morgue as a fellow?

A. I told Mr. Daly, Dr. Pfalzgraf, Dr. Utz, Dr. Parrott.

Q. Did any of them give you instructions of -- any of those individuals give you instructions as to the handling of the film in that context of the official file of the Hamilton County Morgue?

A. No.

Q. Did any of them tell you that it was not -- that the films, the negatives and the prints were not to be released into the public without being passed through the official file of the Hamilton County Morgue's Office first?

MR. GILLIGAN: Object. I don't understand the question, but go ahead.

Q. Do you understand that question?

A. I think so, yeah. The answer is no.

Q. So basically, as I understand it, Mr. Daly never gave you instructions that when you develop film, upon learning that you were developing film at Mr. Condon's studio, that that negative, print needed to be returned to the Hamilton County Morgue's Office to be placed in the official file and not to be disclosed to the public; is that a fair statement?

A. I need to hear the first part of it again of your question.

(Record read by Reporter.)

A. Yes.

Q. Would that also be applicable to Dr. Pfalzgraf?

A. Yes.

Q. Would that be applicable to Dr. Utz?

A. Yes.

Q. Would that be applicable to Dr. Schultz?

A. Well, I don't recall talking to him. I may have but I just don't remember.

Q. What about Dr. Parrott?

A. Yes.

Q. Now as I understand it with this Bronica camera you used it on more than one occasion for official purposes of cases going through the Hamilton County Morgue's Office other than Mr. Melton's case; is that a correct statement?

A. Yes.

Q. And you primarily used that camera

at death scenes, as I understand it; is that a fair statement?

A. Yes.

Q. As opposed to the autopsy scenes, right?

A. Right.

Q. And as I understand it you had that camera for at least a few months; is that a fair statement?

A. Yes.

Q. All right. And you were using it both for personal use and for official purposes, right?

A. Yes.

Q. Did you differentiate on the film that which was personal as opposed to that which was official? In other words, would you, if you took so many pictures of a personal nature and then you were switching to use it for official purposes, would you take the film out of the personal nature and put new film in? Did you segregate the film that way?

A. No.

Q. So you would have film -- I take

it, then, that is correct -- would have both personal and official purposes, photographs that you had taken on the same film?

A. Yeah. But I just want to clarify that I didn't take that many personal photos with it.

Q. How many rolls of film would you estimate you went through using that camera in the official purposes that you were engaged in as a fellow at the Hamilton County Morgue's Office?

A. I don't know how many. Maybe 10.

Q. And my understanding is that this takes special film, right?

A. Yeah. It's just -- it's a little -- it's larger than 35 millimeter film.

Q. And it's also my understanding that you paid for this film out of your own pocket, right?

A. Yes.

Q. And you never submitted reimbursement requests to the Hamilton County Morgue's Office for the purchase of that film, right?

A. Correct.
Q. Okay. Was it your intention to do such that the majority of the film was being used for official purposes?
A. Personally I didn't even think of it.
Q. As I understand it the negatives that you took of the Melton case were destroyed by you after you became aware of the potential of a claim being brought against you; is that a fair statement?
A. Yeah.
Q. Okay. And did you do that with advice of counsel or did you do that on your own?
A. I did that on my own.
Q. Did you destroy all of the negatives of all of the official cases that you took photographs of while you were a fellow at Hamilton County Morgue's Office with that Bronica camera at the same time as you destroyed the Melton photograph, or excuse me, prints, negative?
A. There were photos at Mr. Condon's

studio that -- or negatives which became part of this case. But I destroyed the -- I don't remember if I had others or not at the time. I don't remember.

Q. No one at the Hamilton County Morgue's Office told you to destroy those negatives; is that correct?

A. Correct.

Q. Okay. When you develop this, as I understand it, the film no longer has any images on it, basically everything that was on the film is washed out and transferred to a negative; is that a fair statement?

A. I don't quite understand.

Q. Well, when you put the film through the process to create negatives, which can be exposed to light, for instance, the film can't be exposed to light otherwise you destroy whatever is on the film, right?

A. Right.

Q. When you do the procedure that you did in your bathroom to turn that into a negative it's a negative, it's no longer film, right?

A. I mean, it's still a roll of film. It's just has been through a chemical process.

Q. That's what my point is. It's no longer a roll of film that can be destroyed by light basically, right?

A. Right.

Q. Okay. And what you have left are the negatives?

A. Correct.

Q. Okay. How many rolls of negatives did you destroy after you became aware of the claims being alleged against you?

A. I don't remember.

Q. Was one of the rolls of negatives that you destroyed the roll that contained Mr. Melton's photo?

A. Yes.

Q. And then there were additional ones as well?

A. There may have been. I know there were undeveloped rolls. I'm not sure how many.

Q. And those were destroyed as well?

A. Yeah.

Q. Now, as I understand it with

respect to the Melton case you've already indicated, in response to many questions, that you took a photograph of Mr. Melton's upper torso and head when he was brought in from the scene because you thought that you were going to be the pathologist doing the autopsy. Fair statement?

A. Yes.

Q. Okay. As I understand it the procedure that's followed in autopsies that you usually do a full body view as is when the individual's remains come into the morgue. Fair statement?

A. Yes.

Q. Okay. In your case, however, you just did the upper torso and the head; is that correct?

A. Yes.

Q. Is there a reason why you deviated from what was the standard operating procedure of the Hamilton County Morgue as far as taking a full body of the deceased upon arrival at the Morgue's Office?

A. Well, that would have been taken

the next day. I don't think I deviated from the policy or from the procedure. I never altered the body in any way.

Q. As I understand it you -- the body was in a body bag at the time it was brought in from the scene, right?

A. Yeah.

Q. Okay. And you can't recall whether you unzipped it or whether it was already just open but covering the body, but you turned whatever it was, you turned at least that portion of it aside, right?

A. Yes.

Q. Okay. Now that was on, I believe, November the 9th, right?

A. That sounds correct.

Q. Okay. As I understand it after you took that photo that was the last photo on that particular film, right?

A. Yes.

Q. And then you took that film out of the camera and at some point in time thereafter you developed it?

A. Yes.

Q. And turned it into a negative in your bathroom?
A. Yes.
Q. Okay. And in my understanding after that you went and took this negative over to Mr. Condon's studio to print it, right?
A. Yes.
Q. As I understand Mr. Condon was present at the time that you developed that into a print; is that a correct statement?
A. Yeah.
Q. As I understand it when you say that he was present that means that he was able to observe these official records, these official films or prints of official cases through the Hamilton County Morgue's Office; is that a fair statement?
MR. GILLIGAN: Object to the form of the question.
A. He saw the picture, yes.
Q. And at that point you were not aware of any requests by Mr. Condon to view those, that photo, that negative, that print of Mr. Melton; is that a fair statement?

A. Yes.

Q. But as far as your understanding was concerned Dr. Pfalzgraf, Dr. Utz, Dr. Parrott and Mr. Daly from the Morgue's Office were aware that he would have access to view the photographs that you were taking of the official course and scope of your fellowship at the Hamilton County Morgue's Office when you developed those negatives at his studio; is that a fair statement?

A. Yes.

MR. BARBIERE: Can we take a five minute break?

Q. Sure.

(Break taken.)

Q. Real quick I'd like to backtrack. When you destroyed the film, the undeveloped film and the negatives to which we referred upon learning that you were a potential target or, you know, that there were going to be claims made against you how did you destroy those?

A. The negatives I shredded, the film that was undeveloped I just exposed to light.

Q. Where did you shred the negatives?

A. My house.
Q. Did you have a shredder at home?
A. Yeah.
Q. Did you have prints at that point in time as well?
A. Not that I recall.
Q. All right. So you don't recall destroying any prints; is that a fair statement?
A. Yeah.
Q. And I take it the purpose of destroying those was because you became aware that it wasn't as public records as you anticipated?
MR. WHITAKER: Object.
MR. GILLIGAN: Object.
A. No, that's not the reason.
Q. Why did you destroy it then?
A. I destroyed them because I was being accused of a crime and that I didn't believe I did and I did it out of fear.
Q. You were under the impression that your being accused of being in possession of those films and negatives, that that would give rise to you being somehow culpable criminally.

Is that a fair statement?

MR. WHITAKER: Object.

MR. GILLIGAN: Objection to the form of the question.

A. I was being accused of committing crimes by taking pictures that were done during the course of my work at the Coroner's Office. And the photos I destroyed were ones that I took during the course of my work at the Corner's Office and they were all legitimate photos. And the ones that were -- that I was being accused of committing crimes for were also legitimate photos and I was -- felt threatened and scared that I was going to be accused of more crimes for doing my work at the Coroner's Office that was legitimate.

Q. And it was at that point in time, I take it, at the time that you destroyed the film and the negatives to which we've been referring that you were aware that a search warrant had been executed at the Condon studio, right?

A. Yeah. I think this was after.

Q. And you were aware that the accusations stemmed as a result of those prints and negatives that were found at the Condon studio, right?

A. Right.

Q. Had nothing to do with the ones that were in your possession, right?

A. You mean the charges?

Q. Right.

A. Yeah. Correct. Except for the -- was that Melton negative which I still had the negative.

Q. Other than that one negative of the one photograph that you took of Mr. Melton's remains none of the other photographs on the film that was not yet developed or the negatives were part of what gave rise to the charges against you, right?

A. Correct.

Q. And I take it that you understood that the charges that were being brought were only those that stemmed out of the fact that the police found negatives and prints at Mr. Condon's studio that were of individuals that were decedents that had been, at some point in time, official cases at the Hamilton County

Morgue; is that a fair statement?
MR. BARBIERE: Objection.
A. I have to hear it again. I'm sorry.
Q. Okay.
(Record read by Reporter.)
A. No. I mean, I don't believe that's the only reason charges were brought.
Q. What other reasons are you of the understanding?
MR. PATSFALL: Objection.
MR. GILLIGAN: Now or at the time he destroyed it?
MR. GANSON: No, I'm talking about at the time he destroyed it.
MR. GILLIGAN: Okay.
A. I believe there was, I mean, there was reasons to charge me because of the civil case, to put blame on me to take blame off of the county.
Q. Doctor, during that period of time, the time that you first came on as a fellow, to the time that your fellowship abruptly ended were you told by Mr. Daly the process by which

photographs could be released to the public?
A. No.
Q. Are you aware of the security system that was in place at the Hamilton County Morgue's Office during your time there?
A. I think so, yeah.
Q. Would you agree that in order to get into the morgue operating rooms on the first floor level that you would have to access a keypad?
A. Yes.
Q. Were you also aware that if you went in through the cooler that you would not have to access that security system and you could end up in the same location?
A. Yes.
Q. Were you aware of cameras that were filming the premises?
A. I only knew of the ones filming outside.
Q. That's towards the parking area and the door leading in?
A. Correct.
Q. Okay. There were none that you

were aware of on the interior?
A. Not that I was aware of.
Q. Did you understand the purpose of the locks or the keypads that would lock the doors to the area where the autopsies were performed?
A. I mean, I don't know what the reasoning was at the time they were installed. I mean --
Q. That was never explained to you?
A. No.
Q. Okay. Did you become aware that there was a sign-in procedure for individuals observing autopsies at the Hamilton County Morgue's Office while you were there as a fellow?
A. I was aware that there was a sheet that people could sign if they were viewing an autopsy but I was also told that the other doctors didn't really use it.
Q. Who were you told that by?
A. Well, Dr. Pfalzgraf's the one who told me about the sign-in on the sheet and he also told me -- he didn't tell me about the

other doctors, he just told me that he usually just doesn't do it.

Q. So, in other words, there would be people that would observe autopsies being performed during the official cases of the Hamilton County Morgue that did not necessarily follow the sign-in procedure that was set forth by the Hamilton County Morgue's administration; is that a fair statement?

A. Yes.

Q. Were you ever informed that members of the general public would not be permitted on to certain areas of the Hamilton County Morgue premises?

A. Well, I was told that the general public has to -- is usually limited to that front entrance there, my understanding.

Q. And who were you told that by?

A. I mean, I don't remember being told that. That was just my observation.

Q. So your observation, I take it then, was that in order for members of the general public to access the Hamilton County Morgue's Office that they would have to go

through the reception area on the first floor?
A. Technically it's the second floor, but yes.
Q. Okay. I'll refer to that second, bottom floor where the morgue autopsy rooms are as the basement area.
A. Okay.
Q. First floor and -- so when you referred to as the third floor previously the crime lab was that your reference to using the bottom floor as the main and the main entrance as the first floor, really the second floor?
A. Yeah. Then using your definition it would be the second floor.
Q. And that second floor is, as I understand it, where the crime lab was?
A. Yes.
Q. And you were in that crime lab?
A. Yes, I've been in the crime lab.
Q. And there's a keypad to that crime lab, right?
A. Actually there's a key to the elevator to get access to that level.
Q. Not accessible by the general

public in any way, right?
A. Correct.
Q. Okay. And when you were up in that crime lab you never observed a darkroom or photographic developing equipment in the coroner of that crime lab?
A. No.
Q. At the period of time that you were a fellow at the Hamilton County Morgue's Office did you ever observe any member of the general public accessing any of the official records of the Hamilton County Morgue?
A. No.
Q. Were you ever asked by any member of the general public to access any of the official records of the Hamilton County Morgue?
A. No.
Q. Other than Mr. Condon having the opportunity to view these official photographs that you took in the course and scope of your fellowship at the Hamilton County Morgue was there anybody else that had an opportunity to view those same negatives and prints besides Mr. Condon?

A. No.

Q. Did, in fact, Mr. Condon have an opportunity to observe the photograph that you took of Mr. Melton --

A. Yes.

Q. -- that you printed?

A. Yes.

Q. Okay. And as I understand it from your previous testimony you left the print but you're not sure if you left the negative at Mr. Condon's studio at the time that you left following printing of that negative?

A. Correct.

Q. Okay. And as far as access by Mr. Condon to that print that you left there you have no knowledge as to what he did or did not do with that print? Is that a fair statement?

A. Yeah. I don't know.

Q. And when you left that print there the only person that would have custody and control over that print that you left at Mr. Condon's studio was Mr. Condon?

A. Yes.

Q. And there were no restrictions on

his use by you as to his use of that photograph that you left in his studio on that occasion with respect to Mr. Melton?

A. No. I never gave him -- I never told him any restriction.

Q. Were you aware, prior to the printing of that negative of Mr. Melton, of the project that Mr. Condon was undertaking in connection with the Morgue's Office with regard to his life and death art project?

MR. GILLIGAN: Object.

MR. BARBIERE: Objection.

MR. GILLIGAN: No testimony to that.

A. Yeah. I mean, I think I did testify in the previous deposition about, you know, knowing about his idea for a project --

Q. Now as --

A. -- at the time.

MR. GILLIGAN: That's not what the question was and I move to strike your answer. I think you ought to listen to the entire question if you're going to give an answer like that. That sounds like an unequivocal yes.

Q. Doctor --
MR. GILLIGAN: So I move to strike.
Q. -- before you printed the negative of Mr. Melton and left that print in Mr. Condon's studio for whatever, I think you said toning purposes, right --
A. Right.
Q. All right -- were you aware of a project in which Mr. Condon was engaged for art purposes?
A. Yes.
MR. BARBIERE: Objection.
Q. And what was that project? What was your understanding of that project?
MR. BARBIERE: Objection.
MR. GILLIGAN: Object.
A. Again, it was my understanding, well, it was interest in this project that he had, you know, previously talked about with this so-called life cycle thing and that he was working on the video and at the same time he was going to try and do this project.
Q. Okay. And the video to which you refer is the video of an autopsy to update the

previous autopsy video that was prepared by the Hamilton County Morgue's Office for teaching purposes; is that a fair statement?

MR. BARBIERE: Objection.

A. Yes.

Q. Okay. As I understand it you had absolutely no idea or knowledge of him using props or otherwise manipulating bodies or photographs, prints of photographs, negatives of photographs in the context of this life cycle art project that he was engaged in prior to leaving that print of Mr. Melton at his studio; is that a fair statement?

MR. GILLIGAN: Object to the form of the question. Go ahead.

A. No. It's not. I knew in September I'd seen a print with a ladder so I had seen one print with an object next to a body prior to that.

Q. I'm sorry?

A. Prior to developing the Melton photograph.

Q. Was it your understanding that that print that you saw with a ladder in September of

2000 was taken by Mr. Condon?
A. Yes.
Q. Was it your understanding it was taken by Mr. Condon at the Hamilton County Morgue?
A. Yes.
Q. Was that reported to Dr. Pfalzgraf?
A. No.
Q. Was it reported to Dr. Utz?
A. No.
Q. Was it reported to Dr. Parrott?
A. No.
Q. Was it reported to Mr. Daly?
A. No.
Q. Were you ever informed that any of those four individuals as well as Ronda Gros was aware that that kind of a photograph was being taken by Mr. Condon?
MR. BARBIERE: Objection.
A. Only that last day he was there in January.
MR. GILLIGAN: And you're not answering that as to the whole litany of all those people, correct, so we're clear on what

the record is?

A. Yeah.

MR. GILLIGAN: Go ahead. Sorry to interrupt. But that's the problem I have with the whole litany of people. And I know the testimony, I think you do as well, that he's talking about but it wasn't as to five different people.

Q. Prior to the print being made at Mr. Condon's studio of Mr. Melton by you did any of those people know, based upon your firsthand knowledge, as to what Mr. Melton -- Mr. Condon was doing in the context of this prop being used in the photograph that you saw?

MR. BARBIERE: Objection.

A. My firsthand knowledge, I don't know that they knew.

Q. Are you aware of whether or not Mr. Condon was given express permission to be in possession of official photographs of official cases that passed through the Hamilton County Morgue's Office?

A. I don't know.

Q. Did anybody other than you have Mr.

Condon or utilize Mr. Condon's studio to develop photographs that they took in the context of their official business of -- in the course and scope of their practice at the Hamilton County Morgue such as Dr. Pfalzgraf?

A. Not that I'm aware.

Q. Dr. Utz?

A. Not that I'm aware.

Q. Dr. Parrott?

A. Not that I'm aware.

Q. Mr. Daly?

A. Not that I'm aware.

Q. You're the only one that was -- that you're aware of that actually developed film that you took of official cases at Mr. Condon's studio; is that a fair statement?

A. Yes.

Q. Okay. How did you access Mr. Condon's studio?

A. I would, you know, I would call him and if he was there or we'd plan to meet at a certain day and he would let me in.

Q. So you didn't have a key?

A. No.

Q. And you wouldn't -- would never be there unless Mr. Condon was there, I take it?
A. Correct.
Q. Letting you in, I mean?
A. Yeah.
Q. Okay. Would he stay with you the entire time that you were there?
A. Yeah. I don't think I was ever there alone.
Q. Did you ever leave official prints or negatives of official cases of the Hamilton County Morgue prior to leaving the Mr. Melton photograph at Mr. Condon's studio?
A. I don't think so.
Q. Is that the first occasion then?
A. It seems -- my best recollection is that it's the first time I made a print there but I don't -- again, I don't remember for sure.
Q. Did you make any other prints of any other official photographs taken by you in the course and scope of your practice as a fellow of the Hamilton County Morgue besides the one Melton photograph?
A. I made a print of, I think it was,

Jeffrey Bowles or Bowles, the scene photograph from that case.

Q. Was that at Mr. Condon's studio --

A. Yes.

Q. -- as well?

A. Yeah.

Q. Did you leave that print at Mr. Condon's studio as well?

A. Yes.

Q. And that was one of the prints that was discovered by the Cincinnati Police in their search?

A. Yes.

Q. Do you know if anybody else besides you accessed and utilized Mr. Condon's equipment for purposes of developing film of photographs taken?

A. I don't know.

Q. Was there ever anybody else besides you and Mr. Condon present at the time that you were there that had access to Mr. Condon's developing equipment at the studio?

A. Not that I remember.

Q. So it's always just the two of you?

A. Yeah. I mean, I had been in his studio before when I think his wife was there. But I wasn't developing prints at the time.
Q. During that occasion -- is it one occasion or more than one occasion where Mr. Condon's current wife was there?
A. I don't remember.
Q. Were the prints that you took, that you had developed off of your negatives, observable? I mean, you described, when you were talking to Mr. Gilligan or answering his questions, that they would be left in an open area for drying purposes; is that a fair statement?
A. Yes.
Q. Okay. Were they readily viewable by individuals that would have been passing through Mr. Condon's studio in that area?
A. Well, the studio was quite large. I mean, I don't know where he left them ultimately to dry. But I would imagine that he wouldn't leave them out just for anyone to see as they walked by during the course of his commercial photography.

Q. But you don't know that one way or the other, I take it?
A. No, I don't.
Q. When you left the Melton photograph print at Mr. Condon's studio was it in a place where it was readily accessible and viewable by others that would visit Mr. Condon's studio?
A. You know, when I left I don't remember exactly which part of the studio it was in. But I think it was close to his darkroom area, and his main area where he shoots his commercial work was on the other side of the studio.
Q. How big is this area?
A. I don't know exactly. Maybe 50 or 70 feet.
Q. From one end?
A. Yeah. Maybe a hundred feet.
Q. And what's the width?
A. Fifty.
Q. Is there any --
MR. GILLIGAN: Excuse me. Are you finished answering?
Q. I think he said 50.

A. Fifty feet. I mean, it's just a rough guess.
Q. I understand. I understand. Are there any obstructions, separators, anything that would prevent ready view by anybody that's located in that area from one area to the other?
A. Well, by the size of the picture it would be hard to see across the room. But there were no partitions, no.
Q. Okay. Did you take any steps to secure or otherwise conceal from view of the public the photograph that you printed of Mr. Melton that you took in the official course and scope of your practice as a fellow at the Hamilton County Morgue when you left it at Mr. Condon's studio?
A. Well, I left it in his studio so --
Q. Did you do anything other than leaving it there? I mean, did you cover it? Did you place it in an area where people would not necessarily view it?
A. I personally didn't, no.
Q. I'm going to hand you what's been previously marked as Plaintiff's Exhibit 1, 2

and 3. By agreement of all counsel these are photographs that have been kept and will continue to be kept under seal. Could you identify any of those three photographs, please?

A. I believe these three are the photographs of Mr. Melton.

Q. Okay. Are those the prints that you developed at Mr. Condon's studio -- obviously they're photocopies -- but are those photocopies of the prints that you developed of the negative that you took of Mr. Melton or are they prints developed by others that you don't know?

A. Well, I would assume they're prints that I developed.

Q. Do you recall how many prints you developed of that photograph?

A. Again, like I said before, it would be less than five.

Q. Okay. So those three may not comprise the entire amount?

A. Well, if these were all that was found then they're probably all that there were.

MR. GANSON: I believe I'm pretty

close to being finished but take a few minute break, please.

(Break taken.)

Q. Doctor, looking at these photographs, again, as I understand it the equipment that Mr. Condon had at his studio allowed for cropping of the negative so that you could get a print that only had that which you wanted to print. Do you understand what I'm saying?

A. Yeah.

Q. Do any of the exhibits, Plaintiff's 1, 2 or 3, involve that process where there was cropping involved of the negatives so that you were printing a specific aspect of Mr. Melton's body?

A. You know, I'm not -- don't know for sure but -- because I did take a picture of his face. But may have, yeah.

Q. I mean, my understanding is that you took the picture of Mr. Melton's upper torso and head, right?

A. No. I think I took a picture of his, just his head. I mean, when I exposed the part I exposed his torso, if I remember correctly. But I think I just took a picture of his head.

Q. Okay. And as I understand it when you look at this, these photographs, these photocopies of the photographs, this Plaintiff's 1, 2 and 3, they aren't all the same obviously, right?

A. Well, I guess other than they look similar.

Q. Well, I understand. But like, for instance, if you look at 1 comparing it to 2 it appears that 1 has a different magnification, for lack of a better word, than 2 would, for instance?

A. Not to me.

Q. Okay. In other words, you weren't trying to, in those three prints, attempting to focus in on any particular part of the injuries sustained by Mr. Melton as opposed to just printing the negative as the picture was taken; is that a fair statement?

A. I mean, I really -- I don't remember. It's hard to see in these photographs exactly what they're of. But I don't remember at the time what I was trying to do.

Q. Do you remember at the time what the purpose of what you were trying to depict in those photographs?

A. I think it was just the severity of the head trauma.

Q. And as I understand it this photograph that you took of Mr. Melton which you developed and then put into a print form, the idea was that you were going to put one of them, one of the prints into the official records of the official file at the Hamilton County Morgue's Office and then keep another one for your teaching file?

A. Yes.

Q. Is that a fair statement?

A. Yes.

Q. What was your intention with respect to the negative of that particular photograph?

A. I don't remember thinking about it.

Q. Okay. Were you ever instructed that all negatives of all official photographs that you took in the official course and scope of your practice as a fellow at the Hamilton County Morgue were to be returned to the Hamilton County Morgue's Office?

A. I was never instructed.

Q. By anybody at the morgue?

A. By anyone, no.

Q. Did any official photograph that you took in the official course and scope of your practice as a fellow at the Hamilton County Morgue's Office to your knowledge end up in Mr. Condon's art project?

MR. BARBIERE: Objection.

MR. GILLIGAN: Object. I don't understand the question.

Q. The life cycle art project that we're talking about. And it's important for you to understand subject to these objections.

A. No.

Q. Not that you're aware of?

A. No.

Q. Okay. Nothing else. Thank you very much for your time, Doctor. I appreciate it.

CROSS-EXAMINATION

BY MR. PATSFALL:

Q. Doctor, I got a few questions. Steve Patsfall; I represent Thomas Condon. We met a number of times previously?

A. Yeah.

Q. I'll try and be as quick at this as I can. Now Thomas Condon was your friend by the time that you were developing photos in his studio, correct?

A. Yes.

Q. And Thomas had been around -- I guess you had known him for about four or five months by that time; fair to say?

A. Well, we met in August.

Q. Okay. And this hasn't been talked about a lot in the record but he was a professional photographer?

A. Correct.

Q. He was very good, correct?

A. As far as I knew he was good.

Q. Okay. He had a lot of clients?

A. He appeared very successful.

Q. Okay. And he was happy to share

his information concerning photography with anybody that was interested, correct?
A. Correct.
Q. And that would include you as well as several other members of the Coroner's Office, correct?
A. Yes.
Q. For instance, I think Dr. Utz had a particular interest in becoming a better photographer, correct?
A. I think so. Yes.
Q. Well, and I think you had touched on this briefly in prior deposition testimony is that when you -- as part of your job you have to take photos and you're encouraged to learn to take photographs better; is that correct?
A. Right.
Q. All right. And that's what you were really endeavoring to do when you were striking up a friendship with Mr. Condon and using his studio and developing photos at your own house, correct?
A. Correct.
Q. The particular Melton image that

we're talking about here today, and I think we've seen three photos, Thomas Condon never asked you to take that image, did he?

A. No.

Q. He was not aware that you were taking that image when you took it, correct?

A. Correct.

Q. All right. He never asked you to develop that photograph, correct?

A. Correct.

Q. He never asked you to bring it over to his studio, correct?

A. Correct.

Q. He had no intention and never did use that photograph for any reason, correct?

A. Correct.

Q. That was your film, correct?

A. Correct.

Q. And, by the way, how much would a roll of that film cost?

A. Maybe five dollars.

Q. It was a negligible cost, fair enough?

A. Yes.

Q. You weren't concerned about being reimbursed by anybody for it, correct?
A. Correct.
Q. All right. Now there was film, film was developed by the Coroner's Office all the time outside of the Coroner's Office, correct?
A. Well, when you say all the time --
Q. My understanding, Terry Daly used to often take rolls of film to a developing studio, you know, whatever, a company that does that --
A. Yeah.
Q. -- to have photos developed?
A. Before I came there, yes.
Q. Okay.
A. And he also had taken mine to, one roll of my film to a -- early on -- to a place also.
Q. All right.
MR. GILLIGAN: Would you say the name --
A. To that Norton Photography, I believe.

Q. So it wasn't unusual for the Coroner's Office to have film taken for the Coroner's Office purposes to be developed outside of the Coroner's Office?

A. Yeah, because there was no place to develop it at the Coroner's Office.

Q. I assume from your testimony that it was your intention to return to Thomas Condon's studio to pick up the photograph --

A. Correct.

Q. -- photographs, correct?

A. Correct.

Q. And you, I think in your last deposition, you testified that you took the negative home and left the print at the studio for the purposes of having some more work done on it later and then taking it; is that fair to say?

A. Yes.

Q. All right. So Thomas Condon never had possession of this negative, correct?

A. I don't believe so.

Q. And the photographs, final form, you were going to take, you were going to use

for your own purposes, correct?
A. Correct.
Q. Now there's a whole other set of photographs of Melton that haven't been discussed today and they were taken by the investigator, right?
A. Yeah. I believe there are.
Q. Have you seen those photographs?
A. I've seen some photographs, yes.
Q. All right. Well, there were a lot more images taken by that person, correct?
A. Yeah.
Q. And they were far more gruesome than the photograph that you took, correct?
A. Well, I wouldn't describe any of them -- I mean, you're asking me --
Q. A pathologist is probably not the best person. But they're --
A. They're just as graphic.
Q. -- they're just as graphic. And do you know who had -- and you probably don't know but I'm just checking -- do you know who took possession of those photographs after the charges were made?

A. Who took possession of them? I do know that they were given to Chesley's office and I assume the county prosecutor had them, too.

Q. Okay. And getting back to the number of images it's my understanding that the sole image you took of Melton was -- the only reason you took only one image was because you didn't have any more photos left in your roll; is that correct?

A. Yeah. Probably would have taken more if I had more.

Q. Right. And I think you testified that you didn't really recall what the other images were on that roll?

A. Correct.

Q. Do you think there were some other images that were of bodies taken at the Coroner's Office?

A. Well, there may have been some scene photos.

Q. Okay. Fair enough. That's all I have. Thank you very much.

MR. BARBIERE: I don't have any

questions.

RECROSS-EXAMINATION

BY MR. GILLIGAN:

Q. Just a second. I may have a follow-up question or two in response to the other questions that have just been asked.

You had just testified, in answer to one of Mr. Patsfall's questions, that it was customary in your experience for film taken by pathologists, including yourself in the Coroner's Office, to be developed outside of the Coroner's Office premises. Do you remember that testimony?

A. Yes.

Q. And you said because there was no place to develop film at the Coroner's Office. Did I understand that correctly?

A. Yeah. But I was referring to making prints.

Q. Okay. Making prints?

A. Yeah.

Q. And Mr. Ganson had asked you earlier some questions about this darkroom up on the second floor in the crime lab area. Is there any relationship between this alleged room, darkroom and the ability to make prints that you're aware of?

A. Well --

Q. You know what I'm asking? In other words, are we to assume that if, in fact, a darkroom exists in the crime lab area that, therefore, there was the ability to make prints in the Coroner's Offices?

A. Well, just because they said there's a darkroom there doesn't mean that it has equipment, has chemicals, it's ever been used.

Q. Do you feel comfortable in your testimony notwithstanding whatever this darkroom is that you're unfamiliar with that there were not facilities to make prints there at the Coroner's Office?

A. Yes.

Q. Okay. Now is it -- would it be sort of common knowledge that if film is being sent to an independent laboratory, let's say, or film processing studio or place of business for the making of prints that the person or persons who perform that task, that is, to make prints would see what was depicted in the print?

A. I would assume so, yes.

Q. And I presume anybody that would take a photo presumably saw what was in the photo when the person took it for the most part. That would be normal thought process, right?

A. Yes.

Q. Okay. And I presume that when you would go to a death scene that that dead body was viewed by many people? That be your customary experience?

A. Yes.

Q. And would some of those people be unofficial people as well as official, that is, anybody who came upon the scene could have seen that dead body?

A. Yeah. If it was in a public place there were a lot of people.

Q. And in some instances that would be so?

A. Yes.

Q. Now do you know how many people viewed the dead body of Mr. Melton prior to the

time that body was brought into the morgue?
A. No.
Q. If it was -- did you understand that the poor gentleman was killed as part of an industrial accident?
A. Yes.
Q. Would it be your assumption that there were probably co-workers around at the time this individual met his death?
A. That's a fair assumption.
Q. And would it be a fair assumption that police were called?
A. Yeah.
Q. Would they see the body customarily?
A. Yes.
Q. And how about medics, would they be called customarily?
A. They sometimes are.
Q. And, of course, when they're called they would see the body; is that correct?
A. Yes.
Q. And the person who took the photos who you identified, she would have seen the

body?

A. Yes.

Q. Now these photos that were taken by the investigator, those photos, as you know it, would have been able to be obtained by any member of the public upon making proper request for them with the Hamilton County Coroner's Office; is that correct?

A. Yes.

Q. And in this particular instance I think in answer to one of the other gentlemen's questions you indicated that Mr. Chesley's office got possession of these photographs?

A. Yes.

Q. Were they the official photographs that were taken by the investigator?

A. That's my belief, yes.

Q. Okay. And do you know whether or not they showed those photos to anyone?

A. I believe they showed them to the wife of Mr. Melton.

Q. Okay. And do you know the circumstances upon which they showed these official photos to the wife?

A. I think it was in the process of trying to get her as a client in a lawsuit.
Q. I see. And do you know whether or not Exhibits 1, 2 and 3, the photos or the prints in process of the photo you took of Mr. Melton, were given to Mr. Chesley's office?
A. I assume so.
Q. Do you know whether Mrs. Melton, the widow, had been shown those photos as well?
A. I don't know if she was shown those as well.
Q. Now, and you said those photos were also made available to someone else, I believe?
A. Just the Prosecutor's Office.
Q. Prosecutor's Office. And I presume the jury in the criminal trial saw Exhibits 1, 2 and 3, do you know? You were there.
A. You know, I don't -- I never sat through them when they were showing each photograph so I don't recall.
Q. You don't recall. Okay. Now there has been a lot of questions regarding these prints in process, I'll call them, the prints like Exhibit 1, 2 and 3. Did you consider those

prints to be part of the official record of the Hamilton County Morgue at the Coroner's Office?

A. Can repeat that question?

Q. Yes. It was probably not very well articulated. Exhibits 1, 2 and 3, do you believe that those would depict the prints at the time you left Condon's studio as you described earlier in your testimony?

A. Yeah.

Q. Okay. Did you believe when you left Condon's studio as you sit here today that Exhibit 1, 2 and 3 were left there?

A. Yes.

Q. In that same condition that we just saw?

A. Well, I can't tell by the --

Q. To the best of your recollection?

A. They look like the same photographs.

Q. Did you believe those prints, when you left Condon's office depicted Exhibits 1, 2 and 3, were part of the official records of the Hamilton County Coroner's Office?

A. I don't know if I -- I don't think

I could clarify what the definition of is official but I believe they were taken during the official course of the -- my duties there and I do believe that I was going to put them, at least one photograph, into the file of Mr. Melton. So at the time I believe that at least that these photographs were for the file and for my teaching file and that's all.

Q. All right. So at least one of Exhibits 1, 2 and 3, it was your intention at the time you left Condon's studio that that would be made into a final print and would be included as part of the records of the Hamilton County Coroner's Office for the case of Perry Melton; is that right?

A. Correct.

Q. All right. And you never had the opportunity to do that because the search and seizure took place in the interim; is that how I understand your testimony?

A. Yes.

Q. Okay. You had no intention, when you left Condon's studio, that any one of Exhibit 1, 2 or 3 or any final form would become

a part of Condon's art project, did you?
A. No.
Q. And you didn't intend that Exhibit 1, 2 or 3 or any final form would be used for commercial purposes in any way, shape or form by Mr. Condon, did you?
A. No.
Q. Did you ever give him, directly or indirectly, any permission to Exhibit 1, 2 or 3, those exhibits, to any member of the general public?
A. No.
Q. Would you feel that it was improper if you gave such permission to Condon at that time?
A. To exhibit --
Q. Exhibit those photos to the general public?
A. Yeah, I don't think it would be proper to exhibit those photos.
Q. Why?
A. Well, because I'm the one who took them and they were taken for the purposes I've already told you, not for the purposes of

exhibition.
Q. And did you have a belief that Mr. Condon also understood that?
A. Yes.
Q. Did you have specific discussions with him about that or did you have this belief for some other reason?
A. I assumed that that would be the case.
Q. Why?
A. Because I had no -- I mean, I never talked about exhibiting these photos and it wasn't a -- I mean, I don't know how best --
Q. You think common sense would have dictated that to Condon?
A. Yes.
Q. As a matter of fact you have no evidence whatsoever that Mr. Condon violated your confidence in him not exhibiting these photos to the general public; isn't that correct?
A. Correct.
Q. And as best of your knowledge none of these photos were ever exhibited to anyone

other than Mr. Condon, correct?
A. Correct.
Q. Up until the search and seizure?
A. Correct.
Q. And I just want to make this clear, I think it is, with reference to this art project you are not aware of any -- of Dr. Pfalzgraf, Terry Daly, Ronda Gros, Dr. Schultz, Dr. Utz, Dr. Parrott or anybody connected with the Hamilton County Coroner's Office ever approving Condon to take photos of bodies at the Hamilton County Morgue for purposes of being included in this art project; isn't that correct?
MR. PATSFALL: I'm going to object. I think the testimony has been contradicted. Go ahead and answer.
A. Can you repeat the question?
(Record read by Reporter.)
A. I don't think that's entirely correct.
Q. Well, what is your version?
MR. BARBIERE: I'm going to object. It's hearsay.

A. Again, I mean, are we referring to these, to any photographs he's taken?
Q. That's my general question, yes.
A. And my understanding was that he had discussed this project at these meetings before I was working there and that in those discussions he at least was given some sort of go ahead to show them what he wanted to do. And so that would be my --
Q. You've already testified about that. I guess my point was that he was given permission, that photographs of bodies he took at the Hamilton County Morgue would actually be permitted to be used in an art project that was for commercial purposes?
A. Well, I don't know what purposes were discussed. I have no idea.
Q. And you were asked or you testified about the photo that you observed in September. And I don't know that you had mentioned who the -- the identity of the body. Do you know who the identity of the body was, the one where the ladder was present?
A. Yeah, I think I did testify to

that. It was Brady.

Q. Brady. And I believe you indicated that at the time you saw the Brady photograph in September -- strike that. At the time you saw the Brady photograph in September did you ask Condon whether or not that photo was taken for his art project?

A. I don't remember at the moment.

Q. Okay. And I think it was your testimony, that you're not aware that that photograph was shown to any other person at the Hamilton County Coroner's Office; is that correct?

A. That specific photograph, correct.

Q. And you did make reference to the fact that someone connected with the Hamilton County Coroner's Office became aware of a propped photo right before the search and seizure occurred by the police some time in January of 2001; is that right?

A. Yes.

Q. And that person was only Dr. Utz; is that correct?

A. Yes.

Q. So that that, when you made that comment when we were talking about the theys, you were only talking about Dr. Utz and specifically not Dr. Pfalzgraf, Dr. Schultz, Ronda Lindemann, Terry Daly or Dr. Parrott; is that correct?

MR. PATSFALL: Object. It's not been testified to.

A. In reference to that specific incidence, yes.

Q. That's all I have. Thank you.

RECROSS-EXAMINATION

BY MR. GANSON:

Q. I just have a few more questions literally. The question was raised about film being taken off premises for developing. You recall that line of questioning?

A. Yes.

Q. That was only by Mr. Daly, correct?

A. I believe Dr. Utz had taken film in the past also.

Q. Is that your understanding or are you aware that he took film off premises to be developed at another location such as Norton's?

A. Well, he told me once he took film at just the grocery store, something, to be developed.

Q. Are you aware of whether prints or slides were being developed?

A. Prints. I mean, that's what was my understanding.

Q. Did you know that there were slides that were being developed at the time by the pathologist for -- I should say for the pathologists?

A. Yeah. The incidents that I'm referring to are times when the cameras didn't work and they used alternate cameras.

Q. The digital cameras didn't work?

A. The slide -- they used to take slide cameras to scenes, I think. Those incidences or when the digital ones didn't work or they didn't have a camera with them.

Q. Mr. Gilligan asked you about others seeing Mr. Melton's remains. When Mr. Melton's remains were brought to the morgue the remains were placed in the cooler, right?

A. Yes.

Q. And at that point in time only certain individuals would have access to Mr. Melton's remains, and those individuals would have been associated with or somehow connected with Hamilton County Morgue's Office, correct?

A. Yes.

Q. At that point in time it was not open to public view, correct?

A. Correct. Yes.

Q. And Mr. Gilligan asked you about your prints that we've discussed, Plaintiff's number 1, 2 and 3. They were never made official part -- strike that.

Those prints that are exhibited by Plaintiff's number 1, 2 and 3 were never made a part of the official records or file of the Hamilton County Morgue regarding Mr. Melton; is that a fair statement?

A. Yes.

Q. And obviously that would also apply to the negative because it was destroyed, right?

A. Yes.

Q. So if one were to go to the Hamilton County Morgue and make a proper request

for the official file of Mr. Melton you would not find a copy of your print or negative of that particular photograph, correct?
A. Correct.
Q. And it's also my understanding from your testimony that the only way a member of the public, as noted by Mr. Gilligan in his questioning of you, to secure a copy of that file including the photographs of the official records of the Hamilton County Morgue's Office was that there would have to be a proper request made, right?
A. Well, I don't know the procedure. I was never told that.
Q. And that was exactly my point. My understanding from your previous testimony is that you really had no idea at any point in time during the time that you first started with the Hamilton County Morgue's Office probably up through this litigation as to what the proper procedure that the public needed to follow in order to get release of official files and records of the Hamilton County Morgue's Office, right?

A. Correct.

Q. And then the final question that I have is we've heard a lot about -- questions about assumptions about what Mr. Condon would or would not do with those photographs, those prints, those negatives or whatever that you had left at his studio. You remember that line of questioning?

A. Yes.

Q. And I understood you to say that you never gave him any specific instructions as to the security and integrity of those photographs in the context of that these are official records and they need to be treated as official records, correct?

A. Correct.

Q. And you're not aware of what Mr. Daly may have told Norton's Photography as far as the official nature of the photographs that he was -- or the slides or the negatives that he was bringing over to it for purposes of development, right?

A. Correct.

Q. You were never instructed as far as

any kind of protocol as to what to tell an individual who had control, custody and possession of the negatives and prints that you took of official cases involving Hamilton County Morgue by anybody associated with the Hamilton County Morgue and in the position of authority over you; is that correct?

A. Correct.

Q. Okay. And, in fact, in that context you had no control over Mr. Condon and what he did or did not do with those prints and that -- those negatives that you left of the official cases upon which you took photographs of cases that went through the Hamilton County Morgue's Office; is that correct?

A. I'm sorry?

Q. You had no control over Mr. Condon's use or handling or otherwise with respect to negatives or prints that you took to his studio and left there of cases where you took photographs of official cases in the Hamilton County Morgue's Office, right?

A. Correct.

Q. Okay. So you have no idea what he

may or may not have done in your absence as far as those negatives or prints are concerned, right?

A. Correct.

Q. Thank you. I have nothing further.

MR. BARBIERE: No questions.

MR. WHITAKER: Signature.

____
JONATHAN TOBIAS, M.D.

- - -

(DEPOSITION CONCLUDED AT 12:25 P.M.)

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C E R T I F I C A T E

STATE OF OHIO
: SS
COUNTY OF HAMILTON

I, Valerie Jones Conn, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that JONATHAN TOBIAS, M.D. was by me first duly sworn to depose the truth and nothing but the truth; foregoing is the deposition given at said time and place by said witness; deposition was taken pursuant to stipulations hereinbefore set forth; deposition was taken by me in stenotypy and transcribed by me by means of computer; deposition was submitted to the witness for examination and signature; I am neither a relative of any of the parties or any of their counsel; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D) and have no financial interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio, this ____ day of ______, 2004.

____

My commission expires Valerie Jones Conn, RPR
September 4, 2007 Notary Public - State of Ohio